IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2006

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.19349 OF 2003
and
Writ Petition No.34352 of 2004

G.Manoharan .. Petitioner in both the writ petitions

vs.

The Registrar of Cooperative
Societies,
Kilpauk, Chennai - 600 010. ... 1st Respondent in both the writ petitions

The Additional Registrar of
Cooperative Societies (Credit),
Chairman - Common Cadre Authority,
Office of the Registrar of Co-operative
Societies,
Kilpauk, Chennai - 600 010. ... 2nd Respondent in both the writ petitions

Villupuram District Central Cooperative Bank,
rep. by its Special Officer,
No.2, Hospital Road,
Villupuram.
(R3 - Impleaded as per the order of this Court,
dated 7.11.2005 in W.P.M.P.No.5388 of 2005
by A.K.J.) .... 3rd respondent in W.P.No.34352 of 2004

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W.P.No.19349 of 2003:

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

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W.P.No.34352 of 2004:

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.Vijay Narayanan
Senior Advocate for
M/s.R.Parthiban

For respondents : Mr.D.Srinivasan
Government Advocate for R1 & R2
Mr.R.Arumugam for R3 in WP 34352/2004

C O M M O N O R D E R

W.P.No.19349 of 2003:

This writ petition has been filed for the issuance of a writ of certiorari to call for the records of the second respondent pertaining to his proceedings Rc.No.16/2002/CCA.1, dated 30.6.2003 and quash the said order, dated 30.6.2003 and consequently direct the respondents to settle all the retiral benefits to the petitioner.

W.P.No.34352 of 2004:

This writ petition has been filed for the issuance of a writ of Certiorarified Mandamus to call for the records of the second respondent in proceedings No.Na.Ka.16/02 Po.Pa.Ku.1, dated 3.8.2004, quash the same and consequently direct the respondents to settle all the retirement benefits, which the petitioner is entitled to.

The brief facts of the cases, as stated by the petitioner, are as follows:

2. The petitioner had joined service in the South Arcot District Central Cooperative Bank Limited in the year 1968-69 as an Assistant Manager. After subsequent promotions, he was promoted to the post of Assistant Secretary in the year 1993-1994. When the erstwhile South Arcot District was bifurcated, he was posted in the Villupuram Central Cooperative Bank Limited as its Assistant Secretary in the year 1996-97. Later, he was promoted as its General Manager, a post equivalent to that of Secretary. The Tamil Nadu State Government had created a common cadre of service for the Secretaries and Assistant Secretaries of the Central Cooperative Banks, under Section 75 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter called as the Act). The State Government had issued orders in G.O.Ms.No.130 Cooperation, Food and Consumer Protection Department, dated 8.5.1997, approving the Tamil Nadu Central Cooperative Banks Common Cadre Service Regulations, 1997. The said Regulation came into effect on and from 8.5.1997. The petitioner

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was absorbed in the cadre service and continued in the post of General Manager of the Villupuram District Central Cooperative Bank Limited, till 8.11.2002, when he was transferred to the Nilgiris District Central Cooperative Bank Limited, as its General Manager. He had continued in the said post, till 30.6.2003, when he had attained the age of superannuation.

3. On the date of the petitioner's superannuation, namely, 30.6.2003, a Fax copy of the order Rc.No.16/2002 CCA.I, dated 30.6.2003, which is the impugned order in writ petition No.19349 of 2003, was served on the petitioner by the Special Officer of the Nilgiris District Central Cooperative Bank Limited, along with the endorsement No.Rc.5580/2003 E1, dated 30.6.2003. The order had stated that the Registrar of Cooperative Societies, the first respondent herein, in the letter Rc.No.86456/2002 CBS1, dated 28.6.2003, had directed that the petitioner be placed under suspension pending enquiry into the grave charges, under Section 76 (1)(b) of the Act. Hence, the petitioner was placed under suspension from 30.6.2003.

4. The petitioner had not been informed of the reasons for his suspension and no enquiry had been ordered, with regard to any allegation against him, by the Common Cadre Authority. The order of suspension had been served on the petitioner without any valid reason only with the mala fide intention of denying him the retirement benefits for which he is entitled to. The second respondent does not have the jurisdiction or the authority to pass the impugned order of suspension.

5. The petitioner had further stated that the impugned order, dated 30.6.2003, is arbitrary, unjust and illegal and the original impugned order had not been furnished to the petitioner. The said order was given retrospective effect, i.e., from the fore-noon of 30.6.2003, which is not permissible in law. The petitioner is governed by the Central Cooperative Banks Common Cadre Service Regulations, 1997, framed by the Government in G.O.Ms.No.130, Cooperation, Food and Consumer Protection Department, dated 8.5.1997. There is no provision in the said Regulations for continuing the disciplinary proceedings beyond the date of superannuation and no order had been served on the petitioner extending his service beyond the age of superannuation. Once the petitioner had attained the age of superannuation, the employer-employee relationship comes to an end. In the absence of any provision for the continuance of service after retirement, there is no scope available to the respondents to continue the petitioner's suspension beyond the date of superannuation. Even the requirements of Section 76 (1)(a) of the Act had not been complied with. The provisions of Section 76 (1)(b) can be invoked only in respect of alleged commission of an offence involving moral turpitude relating to the said Society and an order of suspension can be issued only if it is necessary in public interest or in the interest of such Society. It is only the Cadre Authority, as contemplated under G.O.Ms.No.130 Cooperation, Food and Consumer

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Protection, dated 8.5.1997, who can suspend the petitioner, who is a common cadre employee. Therefore, the second respondent is not the Authority to suspend the petitioner. Therefore, the order passed by the second respondent, on 30.6.2003, is arbitrary and illegal. Hence, the present writ petitions.

6. In the counter-affidavit filed on behalf of the respondents, it is stated that the petitioner had committed certain serious irregularities in the issuance of cooking gas loan, promotion and transfer of bank staff and purchase and installation of computers in the bank and thereby, he had caused heavy loss to the Villupuram District Central Cooperative Bank, to an extent of Rs.13.94 lakhs. While the Villupuram District Central Cooperative Bank was collecting materials to initiate disciplinary action against the petitioner, he had attained the age of superannuation, on 30.6.2003. With a view to initiate disciplinary action against the petitioner, the Common Cadre Authority placed him under suspension, even before the date of his retirement, withholding the payment of his terminal benefits and charges were framed by the Common Cadre Authority, in its charge memo Rc.16/2002, dated 3.8.2004.

7. Heard the learned counsel appearing for the petitioner as well as for the respondents.

8. The learned senior counsel appearing on behalf of the petitioner had pointed out the relevant provisions in G.O.Ms.No.130, Cooperation, Food and Protection Department, dated 8.5.1997, and the Regulations. Clause (vi) defines the Cadre Authority, which says 'Cadre Authority' means the Committee constituted as per these Regulations for exercise of such powers as specified in these Regulations. Clause (viii) says 'Cadre Employees' means;- (a) Secretary, and (b) Assistant Secretary of District Central Cooperative Banks to whom these Regulations shall apply. Regulation 3, relating to Composition of common cadre, specifies the authorities, who shall constitute the Cadre Authority. The power of the Cadre Authority is enumerated in Regulation 5, which are as follows:

5. Powers of Cadre Authority:

> The Cadre Authority shall have the following powers:
>
> (i) To decide on all policy matters concerning the Common Cadre Service.
>
> (ii) To approve the Annual Budget.
>
> (iii) To hear appeals against the orders of the Member-Secretary.
>
> (iv) To effect postings of cadre personnel to the District Central Cooperative Banks.
>
> (v) Cadre Authority will be the appointing authority in respect of all the cadre employees.

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(vi) To transfer cadre employees from one bank to another.

(vii) To determine the contribution payable by the Central Cooperative Banks for maintenance of the Common Cadre.

(viii) To make regulations regarding recruitment and conditions of service of Cadre employees.

(ix) To exercise overall control and supervision over cadre employees.

(x) Have such financial powers as specified in these regulations.

(xi) Have powers to determine and modify from time to time, the strength of the Common cadre service with the approval of the Government.

(xii) Cadre Authority shall fix interse seniority of the cadre employees in each cadre post.

Regulation 31 is with regard to the disciplinary proceedings that could be taken against the cadre employee, which also includes the suspension of cadre employee by the Cadre Authority.

9. It was contended on behalf of the petitioner that once the petitioner had been brought under the Common Cadre of Service, the power to regulate his service conditions shall vest only with the Cadre Authority and not with any other Authority, as contemplated by the Regulations in G.O.Ms.No.130, Cooperation, Food and Consumer Protection Department, dated 8.5.1997. Therefore, the order of suspension passed by the second respondent, on 30.6.2003, cannot be held to be valid.

10. It was also pointed out by the learned senior counsel appearing for the petitioner that as per Regulation 32, the Competent Authority to suspend the petitioner is the Cadre Authority which consists of four members as per Regulation 3. According to Regulation 3, the Additional Registrar (Credit), in the Office of the Registrar of Cooperative Societies, shall be the Single Officer as the Competent Authority for the first three years from the date of constitution of the common cadre service. However, it has been mentioned that from the fourth year onwards the composition of the Competent Authority would be as provided under the said Regulation.

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11. The learned counsel appearing for the respondents had submitted that the Cadre Authority has got wide powers including the power to place the cadre employee under suspension, to issue charges, proceed with the domestic enquiry and then to dispose of the disciplinary proceedings, on merits and in accordance with law. Regulation 16 of the Tamil Nadu Central Cooperative Banks Common Cadre Service Regulations, 1997, states that no member of the cadre should be entitled

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to notice or any salary and allowance in lieu thereof, if he is removed from the service on account of misconduct, dishonesty or moral turpitude. Regulation 17 states that every employee appointed in the service shall retire on attaining the age of 58 years, with effect from the afternoon of the last day of the month, in which he attains the age of 58 years. Regulation 25 provides for conduct and discipline of the cadre employee and Regulation 30 provides for various penalties inflicted on the cadre employee and Regulation 31 provides the procedure for taking disciplinary action against the cadre employee. While so, it is wrong to state that the order passed by the second respondent, on 30.6.2003, is invalid in law as being without jurisdiction. Regulation 32 provides an appeal against an order by which the cadre employee may be aggrieved. Since the petitioner had committed serious irregularities and had caused heavy loss to the bank, he was suspended in public interest pending the disciplinary proceedings.

12. In the present case, it is found that the impugned order has been passed by the Additional Registrar (credit), who was the Chairman of the Common Cadre Authority. In spite of the fact that Regulations regarding common cadre of service had come into force in the year, 1997, no Cadre Authority was formed as contemplated under Regulation 3 of Central Cooperative Bank Common Cadre Service Regulation, 1997.

13. The learned counsel appearing for the petitioner had stated that with regard to the Government employees, the fundamental Rules applicable to them, provided that the Government employee can be kept under suspension to continue him in service even beyond the age of superannuation so as to enable the concerned Authority to initiate and continue the disciplinary proceedings against the employee. However, such a provision has not been provided in the Common Cadre Regulation. Further, the decision of the Supreme Court in BHAGIRATHI JENA Vs. BOARD OF DIRECTORS, O.S.F.C. AND OTHERS (1999) 3 SCC 666, is to the effect that in the absence of any specific provision in the relevant Regulations, the disciplinary enquiry initiated against a delinquent employee could not continue after his attaining the age of superannuation and that the delinquent employee is entitled to all the retirement benefits.

14. The order of suspension, dated 30.6.2003, had been issued by the second respondent, suspending the petitioner from service. While the said suspension order was under challenge in writ petition No.19349 of 2003, the second respondent had framed two charges against the petitioner in his proceedings No.Na.Ka.16/02 Po.Pa.Ku.1, dated 3.8.2004. The petitioner had submitted his explanation, on 10.9.2004. Thereafter, by a letter, dated 13.11.2004, an enquiry officer had been appointed to conduct the enquiry against the petitioner. The petitioner has challenged the proceedings of the second respondent, dated 3.8.2004, in W.P.No.34352 of 2004.

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15. The Supreme Court in S.PRATAP SINGH VS. STATE OF PUNJAB (AIR 1964 SC 72) had laid down that there has to be a specific provision under the law to take action against the person, who has ceased to be in service.

16. In BHAGIRATHI JENA Vs. BOARD OF DIRECTORS, O.S.F.C.AND OTHERS ((1999) 3 SCC 666), the Supreme Court has held as follows:

> "No specific provision exists in the Orissa Financial State Corporation Staff Regulations, 1975, for deducting any amount from the provident fund consequent to any misconduct determined in departmental enquiry, nor is there any provision for continuance of departmental enquiry after superannuation. In the absence of any such provisions, it must be held that the respondent-Corporation had no legal authority to make any reduction in the appellant's retiral benefits. There is also no provision for conducting a disciplinary enquiry after the appellant's retirement, nor is there any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing departmental enquiry even for the purpose of imposing any reduction in retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits."

17. Following the above decision, a learned single Judge of the High Court of Madhya Pradesh in RADHESHYAM KHICHROLIA AND ANOTHER Vs. MADHYA PRADESH CO-OPERATIVE MARKETING FEDERATION LTD. AND OTHERS, reported in 2002-III-LLJ 513, has held that continuance of the departmental enquiry after their superannuation was not valid, as there were no service rules providing for it. The High Court upheld their plea and allowed their petitions, quashing the punishment in the one case and the enquiry in the other and directed their retiral benefits be paid to them.

18. Similarly, this Court has held that there has to be a specific provision of law or regulation or a by-law governing the service conditions of the person in question for continuing a departmental enquiry, initiated before the date of superannuation, even after the employee had retired from service. Without such a provision being available, there cannot be an employer-employee relationship surviving after the employee retires from service. Therefore, continuing the

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enquiry proceedings or conducting an action against the person after his retirement from service cannot be sustained in the eye of law. Any punishment sought to be imposed thereafter, including non payment of retirement benefits or recovery of amounts therefrom, cannot be held to be valid. This position of law has been followed by the learned Judges of this Court in their decisions in W.P.No.30222 of 2003, dated 16.2.2004, in W.P.No.21372 of 2003, dated 24.11.2003 and in W.P.No.36027 of 2002 and W.P.No.31151 of 2003, dated 15.3.2005. Further, a Division Bench of this Court in W.A.Nos.3055 to 3058 of 2003 had confirmed the legal position as stated in the various decisions of this Court.

19. From the facts of the case and from the records placed before this Court, it is discernible that there is no provision either in the Tamil Nadu Cooperative societies Act, 1983, or in the Rules framed thereunder or in the Central Cooperative Banks Cadre Service Regulations, 1997, to continue an employee in service beyond the age of superannuation, by keeping him under suspension. Even the learned counsel appearing for the respondents could not point out any provision in this regard. Therefore, in such circumstances, this Court is of the considered view that the petitioner cannot be kept under suspension nor his service could be extended beyond the age of superannuation for the purpose of conducting the disciplinary proceedings against him.

20. In such circumstances, the impugned order of the second respondent, dated 30.6.2003, in his proceedings Rc.No.16/2002/CCA.1 and the consequential order passed in his proceedings No.Na.Ka.16/02 Po.Pa.Ku.1, dated 3.8.2004, cannot be sustained in the eye of law. Therefore, the writ petitions are allowed quashing the impugned proceedings and directing the respondents to settle the retirement benefits due to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected W.P.M.P.No.41481 of 2004 and W.V.M.P.Nos.1556 and 365 of 2005 are closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Registrar of Cooperative
   Societies,
   Kilpauk, Chennai - 600 010.

2. The Additional Registrar of
   Cooperative Societies (Credit),
   Chairman - Common Cadre Authority,
   Office of the Registrar of Co-operative
   Societies,
   Kilpauk, Chennai - 600 010.

3. The Special Officer,
   Villupuram District Central Cooperative Bank,
   No.2, Hospital Road,
   Villupuram.

+2ccs to Mr.R.Parthiban, Advocate Sr 63918 & 63919

+1cc to Mr.R.Arumugam, Advocate Sr 63846

KM (CO)
km/29.12.

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